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## **Allowing on-premises licensees to transport beverages and wines for delivery to consumers- Restaurant Delivery License.**

**Relative and Applicable Statutes and Rules:**

**RSA 179:15**

### **1. Purpose.**

The New Hampshire Liquor Commission- Division of Enforcement & Licensing (Commission) has provided this interpretation of laws passed in the 2021 legislative session. The purpose of this document is to provide licensees with clarity on the meaning of the provisions signed into law and provide guidance on how these provisions will be interpreted and applied by the Commission.

### **2. Authority.**

Administrative Rule Liq. 201<sup>i</sup> gives the Commission the authority to interpret statutes and administrative rules. These questions fall within the authority of the Commission. The purpose of Title XIII is to provide an orderly and controlled environment for the manufacture, wholesale and retail sale of alcoholic beverages. To that extent the General Court has charged the Commission with the fair and reasonable interpretation of the statutes and the administrative rules established under law.

### **3. Discussion of the Issues and Changes to Statutes.**

Senate Bill 66 codified the Governor's 2020 executive order allowing on-premises licensees to transport beverages and wines for delivery to consumers. **SB 66 established a new Restaurant Delivery License (RDL).** The new RDL is available to businesses holding "on-premises" licenses from the liquor commission that prepare food. The full bill creating the law change may be viewed at the following web address [SB 66 – 2021 Legislative Session](#).

The most substantive provisions of the statute occur in section III and the text follows:

*III. (a) Notwithstanding the provisions of paragraph II, an on-premises licensee may purchase a restaurant delivery license from the commission for \$250. Such license shall expire one year after the date of issue and may be renewed by an on-premises licensee for \$250 each year.*



## NEW HAMPSHIRE LIQUOR COMMISSION

Division of Enforcement & Licensing

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*(b) An on-premises licensee in possession of a restaurant delivery license shall only be permitted to transport beverages and wines for delivery to consumers **subject to the following requirements:***

*(1) All deliveries of beverages and wines shall be accompanied by food prepared by the restaurant delivery licensee and ordered by the consumer;*

*(2) All deliveries of beverages and wine conducted pursuant to this section shall be undertaken during the on-premises licensee's hours of operation and shall be delivered only to areas where the sale of alcoholic beverages is permitted;*

*(3) All deliveries of beverages and wine shall be solely for the personal consumption of the consumer and not for resale;*

*(4) All beverages and wines transported pursuant to RSA 179:15, II shall be transported in their original, manufactured, sealed containers and shall consist of **no greater than 192 ounces of malt beverage or 1.5 liters of sparkling or still wine;***

*(5) **Any individual engaged in the delivery of beverages and wines** pursuant to this section shall be an employee who regularly receives a **W-2** from the on-premises licensee and is **at least 21 years of age;** and*

*(6) During deliveries conducted under this section, the person engaged in making the delivery shall acquire a **signed receipt** from the consumer. **Consumers who appear visibly intoxicated or who a reasonable and prudent person would know are intoxicated, who do not produce identification verifying the consumer's age, or who fail to sign a receipt shall not be entitled to his or her delivery of beverages or wine.***

*(c) No holder of a restaurant delivery license or on-premises license shall deliver any alcoholic beverage to any college, university, or school, whether public or private, located within the state. No holder of a restaurant delivery license or on-premises license shall deliver any alcoholic beverage to any public library, public playground, or public park.*

*IV. A person holding an on-premises license engaged in take-out services may include beverages and wine with meals sold to a consumer for consumption by the consumer and not for resale. The requirements set forth in subparagraph III (b) shall apply to any take-out meal sold with beverages or wine.*



## FAQ's on the Law Change Created in SB 66

**Q. I was eligible to make deliveries under the executive order and it did not cost anything. Is that still the case with this law change?**

A. No, to be able to make deliveries of beer, and wine with food prepared by the licensee the business must pay an annual fee of \$250 to the Liquor Commission and acquire a Restaurant Delivery License (RDL) before being allowed to make deliveries of beer and wines moving forward.

**Q. So how do I get the additional delivery license?**

A. Licensees interested in purchasing a RDL should contact the Division of Enforcement and Licensing to make application. You are eligible to obtain the additional license if you are a current, on-premises licensee or if a new licensee at the time of your initial licensure. At the time of application, you will be asked if you have read and understood the law including all limitations and conditions that attach to obtaining the license. This process should be automated in the near future and applicants may apply on-line or using a paper application process with the Commission.

**Q. Can I get into an arrangement with a commercial delivery company to deliver the food by the customer?**

A. No, under the law the delivery person must be your employee, issued a W-2 and at least 21 years of age to deliver the food and beer or wine.

**Q. Can someone just order beer and wine and no food?**

A. No, the law allows the delivery of the beer or wine only when delivered with food prepared by the licensee. The delivery of alcohol is linked to a food order.

**Example** – A customer calls and order a 6 pack of beer without food. The sale and delivery may not be made as the RDL requires the sale of beer and wine to be an accompaniment to a food sale.

**Example** – A customer calls and places a food order and adds a 6 pack of beer to the order. The sale of beer was made as an accompaniment to a food order and therefore the food and alcohol may be delivered together.



**Q. May another licensee place an order for food and alcohol?**

A. No, the law limits the delivery of beer and wine for personal consumption and may not be sold to another licensee for resale.

**Q. A customer ordered some food and wants to order draft beer with his food order. Can I pour draft beer into a container and deliver it with the food?**

A. No, the law limits the sale of beer and wine in their “original container.” Therefore, you are limited not only to the quantity you may sell but you are limited to selling only sealed cans and bottles or other original containers the manufacturer used in packaging.

**Example** – A customer orders food and a boxed wine. The food and wine may be delivered so long as the wine is in its original container and is 1.5 liters or less of wine.

**Q. I have a friend who wants to help me out. He is 30 but not my employee. Can he deliver for me?**

A. No, persons who are eligible to make the deliveries of beer and wine under the law change are limited to your employees (they get a W-2 from you) AND who are 21 years of age or older. While your friend is certainly old enough he is not your employee. If the order was for food only and no alcohol, then your friend could make the food delivery. The requirements and conditions apply when the delivery includes food AND beer or wine.

**Q. My business is in a college town and I routinely deliver food to dorms and frats. Can I deliver beer and wine with these food orders now?**

A. No, the law clearly limits where you can deliver beer and wine with your food orders.

*No holder of a restaurant delivery license or on-premises license shall deliver any alcoholic beverage to any college, university, or school, whether public or private, located within the state. No holder of a restaurant delivery license or on-premises license shall deliver any alcoholic beverage to any public library, public playground, or public park.*

The law is quite explicit on where you are not allowed to deliver so while you can continue to deliver food to the campus, beer and wine is prohibited.

**Q. Do I need to be able to prove that my employee can deliver if stopped?**

A. Yes, the law requires a copy of the delivery permit be kept in the vehicle used to deliver the food and alcohol. Employees should be given a copy and advised they need to produce a copy of it when requested by a Liquor Investigator or police officer.



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**Q. Am I limited as to when I can deliver food and beer or wine?**

A. Yes, your delivery of food AND beer or wine must conform to your hours of operation. If your business is open at night and into the following day you must be careful. While you might deliver food until 3 AM, the laws regarding the hours of sale of alcoholic beverages apply here. On-premise licensees are allowed to sell alcoholic beverage under the provisions of RSA 179:17. No alcohol may be sold by an on-premises licensee after 1 AM. Therefore you may not sell alcohol with food for delivery after 1 AM.

**Q. Let's say I get an order for pizza and a 6 pack of beer at 12:45 AM but I can't deliver it until 1:30 AM. May I make the sale?**

A. No, all deliveries shall be undertaken during the on-premises licensee's hours of operation. These hours are set by RSA 179:17. The delivery must be accomplished by 1:00 a.m.

**Q. Am I obligated to make sure the purchaser of the food and beer or wine is 21 or older and not intoxicated?**

A. Yes, this is a core requirement of all licensees that sell alcohol and their agents. You risk arrest and/or administrative action if an employee were to make a delivery to a person under the age of 21 or to someone who appears to be intoxicated. See the requirements that follow.

*During deliveries conducted under this section, the person engaged in making the delivery shall acquire a signed receipt from the consumer. Consumers who appear visibly intoxicated or who a reasonable and prudent person would know are intoxicated, who do not produce identification verifying the consumer's age, or who fail to sign a receipt shall not be entitled to his or her delivery of beverages or wine.*

**Q. Who should I contact if I have more questions?**

A. Please contact the Division of Enforcement, Licensing and Education at 603-271-3521 to have your questions answered.

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Liq. 201.01 Interpretation of Statutes/Administrative Rules. Any question arising, relating to an interpretation of RSA 175- RSA 180, RSA 126-K, or administrative rules adopted by the commission shall be submitted in writing as a petition to the chairman of the liquor commission requesting a declaratory ruling.